IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 503 of 1994

with

SPECIAL CIVIL APPLICATION No 507 of 1994

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

---

RAJKOT MUNICIPAL CORPORATION

Versus

ABHESING KALYANSINBHAI

---

Appearance:

1. Special Civil Application No. 503 of 1994
   MR BP TANNA for Petitioner No. 1
   MR PV HATHI for Respondent No. 1
2. Special Civil Application No. 507 of 1994
   MR BP TANNA for Petitioner No. 1
   MR PV HATHI for Respondent No. 1

---

CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 20/01/2004

ORAL JUDGEMENT

Heard learned advocate Ms. Mahrook N. Kerrawala for Mr. B.P.Tanna for the petitioner Corporation and Mr. P.V.Hathi, learned advocate for the respondents in these

two petitions. By means of these petitions under Article 227 of the Constitution of India, the petitioner Corporation has challenged the legality, validity and propriety of the impugned common award made by the labour court in Reference No. 1624/84 to 1626/84 and 1770/84 to 1772/84. Present petitions are arising out of the award in reference no. 1625/84 and 1770/84 which is a part of the said common award. In both the said references, the labour court has set aside the order of termination and has also granted reinstatement with continuity of service with full backwages for the intervening period from 22nd September, 1983 till the actual reinstatement of the workmen concerned.

During the course of hearing, it was submitted by the learned advocate Ms. Kerrawala on behalf of the petitioner that this was a temporary arrangement made by the Corporation in view of the scarcity of water in the Rajkot City. She further submitted that the workmen concerned were not selected by due process of law and they were not appointed on any permanent post and, therefore, the corporation was having right to terminate their services as and when necessity arise. She also emphasized that the corporation had received letter from the R & B Department that now the said work will be carried out by the R & B Department and in view of that, services of the workmen concerned were not required and, therefore, order of termination was passed against the workmen She also submitted that the workmen had approached the civil court for the same and similar relief and, therefore, present proceedings of reference were incompetent and the labour court ought not to have entertained those proceedings and, therefore, the labour court has committed error in passing the award in question. She also submitted that the period of service of these workmen was not in dispute namely date of joining and the date of termination. The workmen in reference no. 1770 of 1984 was working as a cleaner in tanker department as daily rated employee w.e.f. 19.4.82 to 22.9.83 and his services were terminated w.e.f. 22.9.93 and thereafter, he was taken in service on 21.4.84 and he worked for some time. Thereafter his services were terminated. The workman in reference no. 1625 of 1984 was appointed as daily rated employee w.e.f.21.12.1982 and he was relieved w.e.f. 22.9.83 as daily rated clerk.

Learned advocate Mr. Hathi submits that both the workmen had completed 240 days' continuous service and the Corporation is governed by the provisions of the ID Act, 1947 and both the said daily rated employees were

the workmen within the meaning of the ID Act, 1947 and, therefore, provisions of section 25-F were applicable and were required to be complied with by the petitioner before terminating their services and for want of such compliance on the part of the corporation, the labour court was right in setting aside the order of termination. He also submitted that if the termination order has been rendered void ab-initio, then for avoiding the liability of back wages for the intervening period, it is necessary for the employer to bring on record that the workman concerned has been employed gainfully, he has been earning enough for his livelihood and if the workman has said that he has remained unemployed during the intervening period, it is necessary for the employer to prove otherwise. He submits that in this case, the corporation has not proved by leading proper evidence to prove gainful employment of the workmen concerned and, therefore, the labour court has rightly awarded back wages for the intervening period. He further submits that there is no procedural irregularity or jurisdictional error committed by the labour court while making the award in question and, therefore, these petition are required to be dismissed.

I have considered these submissions made by the learned advocates for the parties. I have also perused the award in question. Period of service rendered by the workmen concerned has not been disputed by the corporation. In respect of non compliance of sec. 25F, 25G and rule 81 of the Rules also no dispute has been raised by the corporation. Therefore, order of termination amounts to retrenchment within the meaning of section 2(oo) of the ID Act, 1947 which renders the termination/retrenchment void ab initio as per the view taken by the apex court in the matter of MOHAN LAL V. THE MANAGEMENT OF M/S BHARAT ELECTRONICS LTD. reported in AIR 1981 SC 1253. Relevant observations made by the apex court in the said matter are reproduced as under:

"9. Reverting to the facts of this case, termination of service of the appellant does not fall within any of the excepted, or to be precise, excluded categories. Undoubtedly therefore the termination would constitute retrenchment and by a catena of decisions it is well settled that where prerequisite for valid retrenchment as laid down in section 25F has not been complied with, retrenchment bringing about termination of service is ab initio void. In State of Bombay and Ors. v. The Hospital

> Mazdoor Sabha and Ors., this Court held that failure to comply with the requirement of section 25F which prescribes a condition precedent for a valid retrenchment renders the order of retrenchment invalid and inoperative. In other words, it does not bring about a cessation of service of the workman and the workman continues to be in service. This was not even seriously controverted before us."

The scope of Section 2[oo] of the Industrial Disputes Act, 1947 has been examined by the Apex Court in case of PUNJAB LAND DEVELOPMENT & RECLAMATION CORPORATION LTD. V. THE PRESIDING OFFICER, LABOUR COURT, reported in JT 1990 [2] S.C. 489, wherein the question has been examined by the Five Judges Bench of the Apex Court and after taking into consideration all the relevant decisions on the issue, in detail, considered the meaning of retrenchment under Section 2[oo] of the I.D.Act. The relevant observations made in para-82 are reproduced as under :

> 82. Applying the above reasonings; principles and precedents, to the definition in s. 2(00) of the Act, we hold that "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever except those expressly excluded in the section."

According to my opinion, considering the award in question, there is clear breach of section 25F, 25G and rule 81 of the Rules framed under the Act rendering the impugned order of termination void ab initio. After termination of the services of the workmen, new recruitment was made by the corporation no re-employment notice has been served upon the workmen by the corporation. Considering all these facts and circumstances of the case and the decision of the apex court as aforesaid, I am of the opinion that the labour court was right in coming to the conclusion that the order of termination is void ab initio and as there was no evidence as regards gainful employment of these workmen during the intervening period, considering the evidence of the workmen as regards their unemployment during the intervening period, the labour court was right in granting the back wages for the intervening period. Therefore, the award made by the labour court does not call for any interference of this Court in exercise of the powers under Article 227 of the Constitution of India.

This Court is examining the legality, validity and propriety of the impugned award under Article 227 of the Constitution of India. It is a law settled by the apex Court time and again that unless and until it is proved that the labour court and/or the industrial tribunal has committed any jurisdictional error or procedural irregularity or that the findings recorded by such labour court/tribunal are contrary to the evidence on record and perverse, this Court cannot interfere with such order or award. Here, in the instant case, the petitioner corporation has not been able to establish any of these aspects. Recently, this aspect has again been examined by the apex court in the matter of SYED T.A. NAQSHBANDI AND OTHERS V. STATE OF JAMMU & KASHMIR AND OTHERS reported in [2003] 9 SCC 592. Relevant observations made by the apex court in Head Note [H], are reproduced as under:

> "Judicial review is permissible only to the extent of finding whether the process in reaching the decision has been observed correctly and not the decision itself, as such. Critical or independent analysis or appraisal of the material by the Courts exercising powers of judicial review unlike the case of an appellate court, would neither be permissible nor conducive to the interests of either the officers concerned or the system and institutions. Grievances must be sufficiently substantiated to have firm or concrete basis on properly established facts and further proved to be well justified in law, for being countenanced by the court in exercise of its powers of judicial review. Unless the exercise of power is shown to violate any other provision of the Constitution of India or any of the existing statutory rules, the same cannot be challenged by making it a justiciable issue before Courts."

Therefore, there is no substance in these petitions and the same are, therefore, required to be dismissed. Same are, therefore, dismissed. Rule is discharged. Interim relief stands vacated. There shall be no order as to costs.

Learned advocate Ms. Kerrawala appearing for the petitioner submits that in view of the interim order passed by this Court, an amount of Rs.40,000.00 was deposited by the petitioner before the labour court in both the cases which has been withdrawn by the workmen concerned by giving security. Learned advocate Mr. P.V.

Hathi submits that since this court has rejected the petitions, some suitable directions may be issued to the petitioner to comply with the award made by the labour court as confirmed by this court. Considering the submissions made by the learned advocates, petitioner corporation is directed to implement and execute the award in question in favour of the workmen concerned within two months from the date of receipt of copy of this order.

(H.K. Rathod,J.)
Vyas